

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed November 19, 2008. Claims 1-21 and 24-40 were pending, claims 25-29 were withdrawn from consideration, and claims 1-21 and 30-40 were rejected in view of cited art.¹ Claims 3 and 18 are canceled, claims 1, 14, 30, and 40 are amended. Claims 1, 2, 4-17, 19-21, 24, and 30-40 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTION

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1-8, 10, 11, 13-16, 18-21, 24, and 30-40 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,080,182 (*Shaw*) in view of U.S. Patent No. 5,797,960 (*Stevens*), while rejecting claim 12 under 35 U.S.C. § 103(a) as being unpatentable over *Shaw* in view of U.S. Patent No. 6,949,113 (*Van Tassel*). The Office Action also rejected claims 12 and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Shaw* in view of *Stevens* as applied to claim 14 and further in view of *Van Tassel*. Applicant traverses the Office Action's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments can be found throughout the specification and drawings as originally filed.

The Office Action cites *Shaw* as disclosing "a device for sealing a puncture extending through tissue proximal to an interior vessel surface," while acknowledging that "Shaw et al does not disclose that the first disk is attached to a nut and the second disk is attached to a bolt, the nut configured to be releasably coupled to the bolt, or that a joint is connected to the first and second end of the plurality of petals" (Office Action, pages 2 and 3). *Stevens* was cited as disclosing "a first disk attached to a nut and the second disk attached to a bolt, the nut configured to be releasably coupled to the bolt" (Office Action, page 3).

The portions of *Stevens* referred to in the Office Action are directed towards "a double-umbrella device" having a distal patch and a proximal patch (Col. 19, ln. 30). Each patch includes a hub, the hub of the distal patch includes "a threaded hole 160 on its proximal end into which the threaded distal end of inner control rod 140 may be threaded. A circumferential flange 162 is disposed about the proximal end of hub 146 for attachment to the proximal patch" (Col. 19, ll. 54-57). "On its distal end, hub 168 [i.e., the proximal hub] has a cavity 190 having an annular groove 192 for receiving circumferential flange 162 of hub 146 in a *snap-fit relationship*" (Col. 20, ll. 9-12) (emphasis added).

Independent claims 1, 14, and 30, as amended and presented herein recite, in part, and respectively, "a proximal element having a second bare wire frame coupled to the first frame, the first disk being configured to be releasably coupled to the proximal element," a joint connected to the first end and second end of the plurality of petals, the first disk being configured to be releasably coupled to the second disk," and "a proximal element having a second bare wire frame coupled to the first frame, . . . the first disk being configured to be releasably coupled to the proximal element." Applicant has been unable to find in *Stevens* any teaching that the distal hub is "configured to be releasably coupled to" the proximal hub. Rather, the hubs are "snap-fit" together so that "the proximal patch engages and snaps into hub 146 of distal patch 144" (Col. 21, ll. 7-8).

With respect to independent claim 40, neither *Shaw* nor *Stevens* teaches or suggests "a joint directly connected to the first end and the second end of each of petals of the plurality of petals" and that each petal includes "a first end, a second end disposed adjacent to the first end, and an intermediate portion extending from the first end towards the second end." In response to the previous office action response, the Office Action indicates that *Stevens* "teaches joint regions that are connected to disk members. By combining the disk members of Shaw having petals with the connection mechanism of Stevens having joint members, the combined device

has joints that are connected to the plurality of petals" (Office Action, page 6). Reference is made to "joint regions 152 and 180" as the connection mechanism, however each joint region only connects to one end of "the radially-extending struts" rather than to "the first end and the second end of each of petals of the plurality of petals" as recited, in part, by independent claim 40. Furthermore, a second end of the struts of *Stevens*, i.e., the end opposite to that mounted to the hub, is not "disposed adjacent to the first end" as claimed in independent 40, but rather are disposed apart from one another. As such, even if, *arguendo*, the teaching of *Shaw* and *Stevens* were combined, the combination would appear to still not teach or suggest the invention as claimed in independent claim 40.

The Office Action cited *Van Tassel* as disclosing a "device for sealing an opening in a blood vessel comprising a coagulant-enhancing agent that is disposed on a disk" (Office Action, page 5). The Office Action has not cited, nor has Applicant found, any teaching in *Van Tassel* of a proximal element or second disk being "releasably coupled to the first disk," "a joint directly connected to the first end and the second end of each of petals of the plurality of petals," or "a first end, a second end disposed adjacent to the first end."

In view of the failure of *Shaw*, *Stevens*, or *Van Tassel*, whether alone or in combination, to teach the invention of independent claims 1, 14, 30, and 40, Applicant respectfully requests that the rejection under Section 103 be withdrawn. For at least the reasons identified above, Applicant also respectfully requests that the rejection of claims 2, 4-13, 15-17, 19-21, and 31-39 under Section 103 be withdrawn.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

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For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of March, 2009.

Respectfully submitted,

/Paul N. Taylor, Reg.# 57271/

PAUL N. TAYLOR
Registration No. 57,271
Attorney for Applicant
Customer No. 57360
Telephone No. 801.533.9800

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